

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHNNY R VIGIL,

Plaintiff,

v.

No. 19-cv-574 WJ/KRS

DANIEL AGUILAR, and
CLOVIS POLICE DEPARTMENT,

Defendants.

**ORDER GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS AND REQUIRING CURE**

Before the Court is Plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. 2) filed in connection with his prisoner civil rights complaint. Plaintiff's financial information reflects he is unable to prepay the \$400.00 filing fee for this action. The Court will therefore grant the motion, which reduces the fee to \$350.00, and allow Plaintiff to pay in installments. 28 U.S.C. § 1915(b)(1). Ordinarily, Plaintiff would be required to make an initial partial payment of "20 percent of the greater of—(A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint..." *Id.* However, because that amount is only \$3.73 and Plaintiff's account balance is nearly zero, the Court will waive the initial partial payment. *See* 28 U.S.C. § 1915(b)(1), (2). Plaintiff is reminded that he must still pay the \$350.00 filing fee at a later time and must make monthly payments equal to 20% of the preceding month's income credited to his inmate account. *See* 28 U.S.C. § 1915(b)(2).

The Court will also require Plaintiff to refile his complaint on the proper 42 U.S.C. § 1983 form. The current, handwritten Complaint alleges arresting Officer Aguilar released his K-9 animal to attack when Plaintiff was already subdued. Although this may raise an excessive force

claim, the Court cannot perform its screening function until Plaintiff provides more detail about the facts and circumstances surrounding the arrest. *See Graham v. Connor*, 490 U.S. 386, 396 (1989) (whether police used greater force than reasonably necessary depends on “the facts and circumstances of each particular case”). Plaintiff shall submit a form § 1983 complaint, which provides additional detail, within thirty (30) days of entry of this Order. Failure to timely comply will result in dismissal of this case without further notice.

Accordingly, it is **ORDERED** that the Motion to Proceed *In Forma Pauperis* (Doc. 2) is **GRANTED**; and the initial partial payment is **WAIVED**.

It is **FURTHER ORDERED** that starting August 1, 2019, Plaintiff shall make monthly payments of twenty percent (20%) of the preceding month’s income credited to his account or show cause why the designated payments should be excused.

It is **FINALLY ORDERED** that within thirty (30) days of entry of this Order, Plaintiff shall refile his claims on the form § 1983 complaint. The form complaint should include more detail about the facts and circumstances surrounding the arrest. The Clerk’s Office shall **SEND** Plaintiff the form § 1983 complaint.



UNITED STATES MAGISTRATE JUDGE